

To: Utilities Subject to Chapter 81, Disconnect and Deposit Regulations for Residential Utility Service

From: Barbara Alexander, Director, Consumer Assistance

RE: Deposit Requests Pursuant to Chapter 81, section 11.

The Consumer Assistance Division has had several requests to clarify when a deposit can be required of a residential customer pursuant to Chapter 81, section 11. The basic rule is that the utility may seek a security deposit when there is "proof that the customer is likely to be a credit risk." This phrase is defined as "positive, specific, personal financial information obtained from any reasonable, reliable source and demonstrating that it is more probable than not that the customer cannot or will not pay the utility for the service provided."

The Rule states that proof of the following is <u>prima</u> <u>facie</u> "proof that the customer is likely to be a credit risk":

(a) there is delinquent, undisputed bill for utility service that has been terminated and remains unpaid at the time the customer requests service; (b) the customer has, within the past twelve months, been disconnected one or more times for nonpayment of an undisputed bill from the same utility from which the customer is requesting service or disconnected two or more times for nonpayment for utility service rendered within the State of Maine; (c) the customer has entered into a wage-earner plan under Chapter 13 of the Federal Bankruptcy Act and the plan has been dismissed by the Bankruptcy Court for failure to comply with its terms.

The term "prima facie" means "in the absence of any other mitigating or offsetting facts." The existence of one or more of these factors allows the utility to seek a security deposit unless there are overriding factors concerning the probability of future payment by this customer. The utility should consider the customer's entire credit history and CAD will certainly do so in any dispute under section 6 of Chapter 81. The purpose of a deposit is not to punish a customer for previous behavior, but to protect the utility customers who pay their bills from the risk of a future request to make up lost revenues from non-paying customers.

The rule specifically states: "The above list is not an exclusive list of all conditions, events or circumstances that may be evidence that a customer is likely to be a credit risk." The utility is not required to seek the advice of the Consumer Assistance Division with respect to "conditions, events or circumstances" that may lead the utility to believe that the customer is likely to be a credit risk. This provision does mean the utility should carefully document a case in which a security deposit is requested pursuant to this provision.

A security deposit is not allowed if the following alone or in combination are the sole grounds on which a utility relies in determining proof of credit risk: history of late payment; lack of employment or income; irregular or brief employment; or lack of previous history with the utility. Section 11(A)(1). These factors can be considered when coupled with prima facie proof or other credible evidence of credit risk.

The utility may seek to attribute the financial and credit condition or experience of one customer to another. These types of situations must comply with the attribution rules found in paragraphs 4 and 5 of section 11(A).

Chapter 81 does allow the utility to petition for a variation from the rule in section 13. In those situations the utility must demonstrate that the individual customer's, "conduct or known financial condition pose a clear danger of losses to the utility." The section 13 request should be used only when the Rule on its face would seemingly disallow a deposit.

The following typical factual scenarios are often brought to our attention:

1. An applicant for service had prior service and left an unpaid balance which the utility submitted to Small Claims Court. The court ordered the person to pay and the person did pay. Even though the person paid the amount owed, the utility considers the individual a poor credit risk because court action was necessary to obtain payment for prior service.

CAD response: The facts do not establish <u>prima</u> <u>facie</u> proof because the delinquent, undisputed bill does not remain unpaid as of the time the customer requests service. The utility should obtain additional information concerning this person's credit history prior to making a decision. The following kinds of questions would seem pertinent - what other credit history is there for this customer? What was the utility's effort to obtain payment prior to submitting the claim to Small Claims Court? Was the previous bill unpaid simply because the customer was never located in order to have actual notice of the amount owed? This might be a different situation if the individual had notice of the amount and failed to pay or make a payment arrangement prior to the Small Claims Court action.

2. A person applies for service who has a court ordered payment arrangement for prior electric service bills and the amount owed is still unpaid.

CAD response: The rule allows the utility to allege <u>prima</u> <u>facie</u> proof if the bill is unpaid as of the time the <u>customer</u> requests service and the prior service was terminated. Additional facts are necessary to evaluate this scenario: was the service disconnected for nonpayment? Is the court-ordered payment arrangement being met by the customer? Are there changed financial circumstances that would cause this customer's future credit history to be judged favorably? We also interpret the phrase "court order" to refer to Small Claims Court. The situation involving a pending filing for bankruptcy is governed by CAD Bulletin 87-1.

3. A person applies for service who owes money from a previous write-off. The utility proposes to make an arrangement for the amount owed or the deposit; however, the lesser amount must be paid prior to provision of service.

CAD response: The general answer is that the requirement of prima facie proof has been met with a previous delinquent bill for a terminated service. Chapter 81, section ll(H) allows the collection of the deposit prior to the provision of service. The utility is also required, in accordance with section 5 of Chapter 81, to accept a payment arrangement on the undisputed portion of the delinquent amount. The utility's proposal to collect the lesser of the deposit or the outstanding amount in advance of the provision of service may be appropriate; however, this decision should reflect whether or not the customer is eligible for financial assistance. Several financial assistance programs will not pay deposits and the customer (and the utility) would be better served by payment of the arrears and a payment arrangement on the deposit even if the deposit is the lesser amount.

4. A person who owes a write-off contacts the utility to inquire what he or she has to do to establish service. The customer is informed of the write-off amount and that a security deposit will be required. The customer is also informed that the utility will accept arrangements on the larger of the amounts and payment of the lesser of the amount must be paid before service is established. The individual pays the write-off amount and then requests service. The utility considers this person a poor credit risk because the charge was left unpaid until service was requested.

CAD comment: We agree that an individual who pays a delinquent account in order to avoid the imposition of a deposit at or shortly before formally requesting service would meet the prima facie proof of credit risk. However,

it would make some sense for the utility to base its decision on the history of the utility's effort to obtain the delinquent amount. If the customer could not be contacted in the past and is now finding out for the first time the exact amount involved, the prompt payment of that amount should have some impact on the utility's decision to impose a deposit. This information should be evaluated in light of the customer's previous credit history.

5. A person moves into a location and the utility is not notified that the prior occupant has left. The utility learns who the new occupant is and discovers that the individual has a write-off for prior service at a previous location.

CAD comment: The general rule is that a deposit may be appropriate in this situation. This situation contrasts with a transfer of service from one location to another. In other words, someone who is moving from one apartment to another may owe money on the previous location, but the utility has not completed its regular collection efforts for amounts in arrears. A customer who transfers service from one location to another and agrees to a payment arrangement on any outstanding amount owed should not, based on this fact alone, be charged a security deposit.

6. The customer's service has been disconnected for nonpayment and the customer calls to make arrangements. The utility proposes to make an arrangement on the larger amount of either the deposit or the amount in arrears, and require payment of the lesser amount before connecting the service.

CAD comment: Disconnection meets the <u>prima facie</u> test, but the customer's previous credit history and the circumstances surrounding the disconnection should be considered. Disconnection while a dispute is pending pursuant to section 6(D) of the rule would not meet this test, for example. The utility's proposal concerning payment arrangement is subject to the same comment as in Paragraph 3.

7. The customer is due for disconnection or has been disconnected for nonpayment. The customer's spouse requests service in his or her name and is financially dependent on the customer.

CAD comment: Section 11(A)(4) of the rule allows the utility to attribute the financial and credit condition of

the disconnected spouse to the one requesting the service if the spouse applying for service is financially dependent on the previous customer. If the customer is "due for disconnection" and agrees to a payment arrangement, the spouse requesting service should not be required to pay a security deposit based on these facts alone. Note also that Section 11(A)(5) describes the same sort of approach for unrelated adults.

Utilities should pay particular attention to the requirements of section 11(B) concerning the deposit amount. Normally, the deposit amount must not exceed "two average billing periods, as that amount may be reasonably anticipated at the time the deposit is collected." The two average billing periods should be calculated based on an annual average. However, if there is readily predictable seasonal variation in use (i.e., electric space heating), the rule allows the utility to request a deposit equal to the anticipated amount of two consecutive, high-use seasonal bills. The utility should seek a deposit based on anticipated usage and not merely on usage patterns of previous occupants. The utility is required to calculate the anticipated annual bill of a customer with no previous payment history with the utility as equal to or less than the average annual bill of other residential customers of the utility whose annual service from the utility is similar or is expected to be similar to that of the customer from whom a deposit is demanded or retained. The rule also allows an increase or decrease in the amount of any deposit which has already been collected if three consecutive billings deviate from the amount originally estimated by more than 33 1/3%.

In addition, section 11(D) requires that any utility that seeks to collect a deposit to advise the customer "in writing" of the customer's right to be furnished, upon request, with proof that the customer's is likely to be a credit risk or to damage the property of the utility. In addition, the utility must also inform any customer that the timely payment of all bills presented by the utility for twelve consecutive months, as provided in section 11(C), will entitle the customer to a refund of that deposit with interest. The utility must also inform the customer of the utility's ability to increase, and the customer's right to request a decrease, in the amount of the deposit as provided in section 11(B). Security deposits must be confirmed in writing and contain these disclosures. In addition, section 6 requires the utility to advise the customer who disputes a deposit request of their right to appeal to the CAD.

Section 11(I) provides:

I. Uninterrupted Service. The failure of a customer to pay any requested increase of an existing deposit or to pay an initial deposit with respect to uninterrupted service presently being provided by the utility shall not be a sufficient reason for disconnection or termination of service, provided that all bills, rendered subsequent to the time the deposit is requested, for utility service provided by the utility requesting the payments, are paid within thirty (30) days after the postmark of such bills.

This provision prohibits a utility from threatening disconnection for failure to pay a deposit or an increased deposit amount with respect to uninterrupted service presently provided by the utility if the customer pays current bills in a timely manner. CAD interprets this provision to be applicable to a transfer of an account as well.

Your questions and comments on this topic are most welcome. CAD Bulletins are informal opinions of the Consumer Assistance Division and do not reflect the opinion or decision of the Commission. An Advisory Ruling may be requested of the Commission pursuant to Chapter 11, Section 5 of the Commission's Rules of Practice and Procedure.